

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

HANEEF THOMPSON, et al.	:	
	:	CIVIL ACTION
Plaintiffs,	:	
	:	No. 05-6214
v.	:	
	:	
CITY OF PHILADELPHIA, et al.	:	
	:	
Defendants.	:	

**MEMORANDUM**

Presently pending is Defendants’ Motion for Partial Summary Judgment, and Plaintiffs’ Response thereto. For the reasons stated below, Defendants’ Motion will be granted in part and denied in part.

**Factual and Procedural Background**

Plaintiffs Haneef Thompson and Corrine Fields filed the present consolidated action against the City of Philadelphia and Defendants Brian Newell and Alfonse Johnson, members of the Philadelphia Police Department. Plaintiffs’ allege a violation of their constitutional rights pursuant to 42 U.S.C. §§ 1983 and 1985, and pendant state law claims. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

Plaintiff Thompson, by way of his Complaint and Affidavit, states that on December 8, 2003, he was sitting in a parked car with a female friend. Defendants Newell and Johnson allegedly approached the car and asked Plaintiff Thompson and his friend to exit the vehicle. Plaintiff Thompson and his friend allegedly complied with the Defendants’ request. Plaintiff Thompson’s friend was allegedly permitted to leave the scene. Plaintiff Thompson states that he was ordered to place his hands behind his back, and before he could comply, he was sprayed by

Officer Johnson with mace or pepper spray and then arrested. Plaintiff Thompson states in his Affidavit that Defendant Johnson continued to spray him with mace or pepper spray after he was handcuffed and sitting on the ground.

Plaintiff Fields' states in her Complaint that neighbors informed her that her son was being arrested on December 8, 2003. When Plaintiff Fields reached her son, Plaintiff Thompson, he was allegedly sitting on the ground in handcuffs and being sprayed with mace or pepper spray by Defendants Newell and Johnson. When Plaintiff Fields protested the treatment of her son, Defendants Newell and Johnson allegedly pushed Plaintiff Fields so hard that she struck her head and lost consciousness. Plaintiff Fields allegedly regained consciousness one minute later and after a brief struggle, was arrested. After Plaintiff Fields was processed, she was allegedly taken to Mercy Hospital for medical treatment and subsequently incarcerated for four (4) days.

Defendants Johnson, Newell, and the City of Philadelphia filed the present Motion for Partial Summary Judgment on Plaintiffs' Municipal Liability and Punitive Damages Claims, and on Plaintiff Thompson's Conspiracy and Pennsylvania Constitutional claims.

Plaintiff Thompson's Complaint is styled as having six (6) Counts: (1) Excessive Force in Violation of the Fourth Amendment; (2) Conspiracy to Violate Plaintiff's Constitutional Rights; (3) the Court notes that Plaintiff's Complaint does not contain a Count Three; (4) Municipal Liability due to the Failure to Train/Discipline; (5) Excessive Force in Violation of the Pennsylvania Constitution; and (6) Failure to Train/Discipline in Violation of the Pennsylvania Constitution. Plaintiff Thompson is requesting compensatory and punitive damages.

Plaintiff Thompson "stipulated" or consented to the dismissal of Counts Four, Five and Six of his Complaint. As such, Defendants' Motion is granted as to Counts Four, Five and Six of

Plaintiff Thompson's Complaint. Plaintiff Thompson asserts, however, that there are genuine issues of material fact suitable to deny the dismissal of his Count Two and his punitive damages claim

Plaintiff Field's claim has three (3) Counts: (1) Federal Civil Rights Claims under the Fourth and Fourteenth Amendments against all Defendants alleging Unlawful Arrest, Malicious Prosecution, and Excessive Force; (2) a Federal Civil Rights Claim against the City of Philadelphia pursuant to Municipal Liability; and (3) Supplemental State Claims against Defendants Newell and Johnson alleging Assault, Battery, False Arrest, False Imprisonment, Malicious Prosecution, and Intentional Infliction of Emotional Distress. Plaintiff Fields is also requesting compensatory and punitive damages.

Plaintiff Fields "stipulated" or consented to the dismissal of Count Two of her Complaint, and her request for punitive damages. As such, Defendants' Motion is granted as to Count Two of Plaintiff Field's Complaint, and her claim for punitive damages.

### **Discussion**

Summary judgment shall be awarded "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A genuine issue as to a material fact exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

A party seeking summary judgment bears the initial responsibility of identifying the basis for its motion, along with evidence clearly demonstrating the absence of a genuine issue of

material fact. See Celotex Corp. v. Catreer, 477 U.S. 317, 323 (1986). Rule 56(e) of the Federal Rules of Civil Procedure requires the nonmoving party to supply sufficient evidence, not mere allegations, for a reasonable jury to find in the non-movant's favor. See Oldson v. General Elec. Astrospace, 101 F.3d 947, 951 (3d Cir. 1996). This evidence must be viewed in the light most favorable to the nonmoving party. See Anderson, 477 U.S. at 256.

#### **A. Count Two of Plaintiff Thompson's Claim**

Plaintiff Thompson asserts a conspiracy claim against Defendants Newell and Johnson pursuant to 42 U.S.C. § 1985. To establish a conspiracy claim under § 1985, a plaintiff must prove the following elements: (1) a conspiracy; (2) for the purpose of depriving, either directly or indirectly, plaintiff of equal protection of the laws, or equal privileges and immunities under the laws; and (3) an act in furtherance of the conspiracy; (4) whereby plaintiff is injured in his person or property or deprived of any right or privilege of a citizen of the United States. United Bhd. Of Carpenters & Joiners v. Scott, 463 U.S. 825, 828-29 (1983). A conspiracy is when a combination of two or more persons act in concert to do a criminal act, or to do a lawful act by unlawful means or for an unlawful purpose. Hammond v. Creative Financial Planning Org., 800 F. Supp. 1244, 1248 (E.D. Pa. 1992). A plaintiff must make "specific factual allegations" of a combination, agreement, or understanding among all or any of the defendants to plan, plot or conspire to carry out the alleged chain of events. Id.

The Court finds that Plaintiff Thompson provided enough evidence on summary judgment to successfully oppose deny Defendants' Motion. In his Complaint and Affidavit Plaintiff Thompson makes specific factual allegations of an understanding between Defendants Newell and Johnson to jointly subject him to excessive force while the Officers were making an

arrest. Specifically, Plaintiff Thompson alleges that Defendant Johnson sprayed him with pepper spray or mace, while Defendant Newell tackled and handcuffed Plaintiff Thompson. Moreover, Plaintiff Thompson, by affidavit, states that Defendants acted in concert to deprive him of his right to be free from excessive force during an arrest. Finally, Plaintiff Thompson states that the excessive force committed by Defendants Newell and Thompson caused injury to Plaintiff's person. See Pl. Compl. 3. When viewed in the light most favorable to the nonmoving party, there is a genuine issue of material fact as to whether Defendants Newell and Johnson conspired to deprive Plaintiff Thompson of a constitutional right. As such, Defendants' Motion for Partial Summary Judgment as to Count Two (2) of Plaintiff Thompson's Complaint will be denied.

#### **B. Plaintiff Thompson's Claim for Punitive Damages**

Punitive damages are available against a government employee sued in his individual capacity where the actor's conduct is shown to be motivated by evil intent or motive, or when it rises to the level of "reckless or callous indifference" to a plaintiff's constitutional rights. Smith v. Wade, 461 U.S. 30, 56 (1983).

There is a genuine issue of material fact as to whether Defendants' conduct was motivated by evil intent or motive, or rose to the level of reckless or callous indifference. For example, Plaintiff Thompson alleges that he was not given time to comply with Defendants' orders before being sprayed with mace or pepper spray. A reasonable jury could return a verdict for Plaintiff Thompson; accordingly, Defendants' Motion for Partial Summary Judgment as to Plaintiff Thompson's claim for punitive damages will be denied. An appropriate order follows.

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Defendants.	:	

**ORDER**

Presently pending is Defendants' Motion for Partial Summary Judgment, and Plaintiffs' Response thereto. Pursuant to the "stipulations" on page two (2) of Plaintiff Thompson's Reply to Defendant's Motion for Partial Summary Judgment, Counts Four, Five, and Six of Plaintiff Thompson's Complaint are dismissed. Pursuant to the "stipulations" on page one (1) of Plaintiff Fields' Response to Defendants' Motion for Partial Summary Judgment, Count Two of her Complaint and her Punitive Damages claim are dismissed.

Pursuant to the Order dated 04/06/2006, the action filed under 05-cv-6296 was

consolidated with the present action. Parties should no longer file documents under the civil action 05-cv-6296.

**AND NOW**, this 19th day of October, **IT IS HEREBY ORDERED THAT** Defendants' Motion is granted in part and denied in part. **IT IS FURTHER ORDERED THAT:**

1. Defendants' Motion as to Count Two of Plaintiff Field's Complaint is **GRANTED** by consent of Plaintiff Fields;
2. Defendants' Motion as to Plaintiff Field's request for Punitive Damages is **GRANTED** by consent of Plaintiff Fields;
3. Defendants' Motion as to Counts Four, Five, and Six of Plaintiff Thompson's Complaint is **GRANTED** by consent of Plaintiff Thompson;
4. Defendants Newell and Johnson's Motion as to Count Two of Plaintiff Thompson's Complaint is **DENIED**;
5. Defendants Newell and Johnson's Motion as to Plaintiff Thompson's request for Punitive Damages is **DENIED**.
6. The Clerk is ordered to close statistically 05-cv-6296.

**IT IS FURTHER ORDERED** that the Court's Deputy Clerk will schedule a pretrial/settlement conference with the parties' counsel to this action.

COURT:

BY THE

s/ Clifford

Scott Green, S.J.

CLIFFORD

SCOTT GREEN, S.J.